



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Ronald King--Reconsideration

File: B-251297.2

Date: December 23, 1992

Ronald King for the protester, Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing protest as untimely is denied where untimeliness was caused by protester's mistaken initial filing at the General Services Board of Contract Appeals (GSBCA); protester's lack of actual knowledge of GSBCA's jurisdictional limitations does not excuse failure to timely file protest at General Accounting Office.

DECISION

Ronald King requests reconsideration of our November 20, 1992, decision dismissing his protest of the Department of the Navy's rejection of his proposal for dental services under request for proposals (RFP) No. N62645-92-R-0023.

We deny the request.

As background, Dr. King submitted a proposal to provide dental services for the Navy beginning October 1. On September 25, a Navy contracting specialist telephoned Dr. King to confirm his interest in the position. According to Dr. King, the contracting specialist offered him the position. As the October 1 contract start date was only a few days away, Dr. King expressed concern about leaving his present job without providing sufficient notice; the contracting specialist offered to find out the latest date that Dr. King could start the new job. On September 28, the contracting specialist informed Dr. King by telephone that the Navy was no longer considering him for the position.

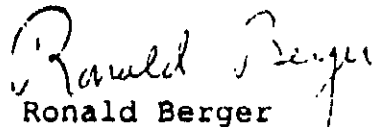
On September 30, Dr. King informed the Navy in writing that he was formally protesting the agency's decision not to award him the contract. On October 2, Dr. King received a letter from the Navy stating that the award had been made to another offeror. When Dr. King had not received a response

to his agency-level protest by October 24, he filed a protest with the General Services Board of Contract Appeals (GSBCA). GSBCA dismissed the protest for lack of jurisdiction. On October 31, Dr. King received a letter from the Navy denying his protest; he then filed his protest in our Office on November 12.

We dismissed Dr. King's protest as untimely. As explained in our decision, when a protest is filed initially with the contracting agency, any subsequent protest to our Office must be received within 10 working days of the protester's notice of the initial adverse agency action. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1992). We found that the agency's notification to Dr. King of award to another offeror, received after the agency-level protest was filed, constituted constructive notice of adverse agency action on the protest. See Buck-El, Inc., B-246425, Dec. 19, 1991, 91-2 CPD ¶ 565. Accordingly, Dr. King had 10 days from receipt of that notification to file his protest in our Office. Instead of protesting to our Office, however, Dr. King first filed another protest letter with the agency, and then with GSBCA. Since Dr. King did not file his protest in our Office until one month after he received constructive notice of the adverse action against his agency-level protest, it was untimely.

In his reconsideration request, Dr. King maintains that we should consider his protest timely, since it was filed within 10 days after the dismissal of the GSBCA protest, and he was unaware that GSBCA was not the proper forum in which to file. Dr. King's argument is without merit. As we explained in our decision, our timeliness requirements are not tolled by mistaken filing in an improper forum. Buck-El, Inc., supra. Notwithstanding Dr. King's lack of actual knowledge of GSBCA's jurisdictional requirements, Dr. King was on constructive notice of them because they are published in the Federal Register and the Code of Federal Regulations. See 48 C.F.R. §§ 33.102(a) and 33.105 (1992). In any case, even had Dr. King been aware that GSBCA would not consider his protest, and therefore instead had filed his October 24 protest with our Office, the protest would be untimely since, as we held in our prior decision, it was based on adverse agency action he became aware of on October 2, more than 10 days earlier.

As Dr. King has not established that our decision contained any errors of fact or law, or presented new information that warrants its reversal or modification, the request for reconsideration is denied. See R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.



Ronald Berger
Associate General Counsel